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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/371,612	08/10/1999	ERWIN HACKER	514413-3768	9453
20999	7590	10/12/2005	EXAMINER	
FROMMER LAWRENCE & HAUG 745 FIFTH AVENUE- 10TH FL. NEW YORK, NY 10151			CLARDY, S	
			ART UNIT	PAPER NUMBER
			1617	

DATE MAILED: 10/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/371,612

Applicant(s)

HACKER ET AL.

Examiner

S. Mark Clardy

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 July 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 16 and 23-42 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 29,30 and 38-42 is/are allowed.
- 6) ☒ Claim(s) 23,27,28,31,34 and 37 is/are rejected.
- 7) ☒ Claim(s) 16,24-26,32,33,35 and 36 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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Claims 16 and 23-42 are pending in this application.

Applicants' claims are drawn to synergistic herbicidal compositions and methods of using them in soybeans, the compositions comprising (with the exceptions outlined in claim 23):

A) a broad spectrum herbicide

A1: glufosinate

A2: glyphosate

A3: imidazolinones (imazethapyr, imazaquin, imazamox, imazapyr)

A4: protoporphyrinogen oxidase (PPO) inhibitors;

B) a second herbicide, except as noted (with optional safener):

B1: trifluralin, metribuzin, clomazone, pendimethalin, metolachlor, flumetsulam, dimethenamid, alachlor, linuron, sulfentrazone, ethalfluralin, fluthiamide, norflurazone, vernolate, flumioxazin

B2: chlortoluron, bentazone, thifensulfuron, oxyfluorfen, lactofen, fomesafen, flumichlorac, acifluorfen, 2,4-DB, 2,4-D, chlorimuron, diclosulam, fluthiacet, cloransulam, oxasulfuron

B3: sethoxydim, cycloxydim, clethodim

B4: quizalofop, fenoxaprop, fluazifop, haloxyfop, propaquizafop

B5: paraquat.

Again, in the response to the requirement to elect a species received on April 23, 2001, applicant elected with traverse of the species comprising glufosinate-ammonium¹ (A1.2). Examination has been previously expanded beyond the originally elected B component (cloransulam-methyl², B2.12) to encompass all B herbicides.

¹Ammonium 2-amino-4-(hydroxymethylphosphinyl)butanoate

² 3-chloro-2-[[[(5-ethoxy-7-fluoro[1,2,4]triazolo[1,5c]pyrimidin-2-yl)sulfonyl]amino]benzoic acid

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The claimed subject matter has been determined to be allowable with respect to A1, A2 and A4, in combination with the B herbicides as stated (with exclusions).

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 31, 34, and 37 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 31, 34, and 37 each claims a "method according to claim [29, 32, 35, respectively]" wherein the parent claim is actually a composition claim. It would appear that the intended parent claims are claims 30, 33, and 36, respectively.

Claim 25 is objected to under 37 CFR 1.75 as being a substantial duplicate of claim 16. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this

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subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 23, 27, 28 are rejected under 35 U.S.C. 102(a), (b), and (e) as being anticipated by Willms et al (US 5,696,051).

Willms et al teaches synergistic combinations of herbicides comprising an imidazolinone herbicide (imazaquin, imazethapyr, imazethamethapyr) and at least one herbicide selected from dicamba, 2,4-D, bromoxynil, pyridate, cyclohexanediones, and pyridylsulfonyleureas (abstract, col 1). Applicants' claims include the combination of imidazolinones (in particular, imazaquin and imazethapyr) in combination with 2,4-D. The combinations of Willms are taught to be of particular use in soybeans (col 1, lines 5-10). Additional herbicides may be included 9col 2, lines 13-22) as well as additional customary formulation adjuvants (columns 3-4). It is recommended that 2,4-D be added to the proviso statements c) and d) at the end of claim 23.

Claims 29, 30, 38-42 are allowed.

Claims 31, 34, 37 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Claims 16, 24, 26, 32-37 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 25 is objected to as a duplicate of claim 16

Claims 23, 27, 28 are anticipated.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the

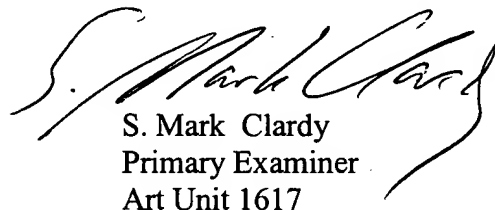
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application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to S. Mark Clardy whose telephone number is 571-272-0611. The examiner can normally be reached on 7:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreenivasan Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


S. Mark Clardy
Primary Examiner
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October 5, 2005